

**United States Department of Labor
Employees' Compensation Appeals Board**

M.J., Appellant)	
)	
and)	Docket No. 24-0800
)	Issued: November 7, 2024
U.S. POSTAL SERVICE, MONROE POST)	
OFFICE, Monroe, NY, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 31, 2024 appellant filed a timely appeal from a July 2, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to her accepted October 2, 2019 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the July 2, 2024 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On October 31, 2019 appellant, then a 57-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 2, 2019 she sustained increased low back pain radiating into her upper and lower extremities while standing, twisting, turning, reaching, pulling a handbrake, and driving while in the performance of duty.³ She stopped work on that date. On the reverse side of the claim form, the employing establishment contended that appellant was not in the performance of duty when injured. It noted that she did not report an injury when she reported to work the next day that she only worked four hours a day in a modified-duty assignment.

On October 16, 2019 Dr. John W. Ellis, a Board-certified family practitioner, described appellant's previous December 22, 2015 employment injury and noted that she had returned to light-duty work for four hours a day on September 11, 2017. Appellant then stopped work on that date and returned on October 2, 2019. Dr. Ellis performed a physical examination and diagnosed muscle tendon unit strain of the cervical spine, deranged discs in the cervical spine, and right C5 and C6 spinal nerve impingement as a result of appellant's work activities on October 2, 2019. He opined that on October 2, 2019 her neck, radicular symptoms down her arm, and right carpal tunnel syndrome worsened. Dr. Ellis found that the main cause of appellant's diagnosed conditions was her many years of working at the employing establishment, which caused multiple strains in her neck and shoulders, traumatic arthritis, spondylolysis, and deranged discs in her neck with impingement of the spinal nerves down her arms, tendinitis of the right wrist, and carpal tunnel syndrome in the right hand. He determined that she was totally disabled from work commencing October 24, 2019.

In October 19 and November 4, 2019 letters, the employing establishment reported that she returned to work on October 2, 2019 and completed her four-hour shift, worked two hours in her limited-duty position on October 3, 2019, and then stopped work and filed the current traumatic injury claim.

In a November 15, 2019 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received additional evidence. On October 3, 2019 Dr. Sharon Rosenberg, a Board-certified family practitioner, opined that appellant was totally disabled from work.

On December 3, 2019 appellant completed the development questionnaire and asserted that the job requirements of her limited-duty position exceeded her abilities as she was required to continuously stand, twist, turn, reach, and bend while casing her delivery route. She related that she delivered express mail which required her to exert force to open the sliding door of her postal

³ OWCP assigned the present claim OWCP File No. xxxxxx352. Appellant has a prior accepted claim under OWCP File No. xxxxxx891 for a traumatic December 22, 2015 low back sprain, sacroiliac joint sprain, left rib contusion, and lumbar spondylosis. She also has an accepted claim under OWCP File No. xxxxxx139 for a September 11, 2017 lumbar spondylosis, and strained sacroiliac joint. OWCP has administratively combined appellant's claims, with OWCP File No. xxxxxx891 serving as the master file.

vehicle to enter and exit the vehicle, to engage the emergency brake at every stop, and to ensure that the tires were curbed.

By decision dated December 18, 2019, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical conditions and the accepted employment incident.

OWCP continued to receive evidence. In a February 3, 2020 report, Dr. Ellis recounted appellant's history of injury and performed a physical examination. He diagnosed muscle tendon strain of the cervical spine, deranged discs of the cervical spine, right C6 and C7 spinal nerve impingement, right carpal tunnel syndrome with median nerve impingement, and right wrist tendinitis. Dr. Ellis opined that appellant's conditions arose out of, and in the course of, her federal employment, and that employment factors and work duties contributed to, aggravated, and/or caused her injuries. He related that her repetitive work at the employing establishment had accelerated and aggravated her neck, discs, and radiculopathy in her right upper extremity, and the tendinitis and carpal tunnel syndrome in her right wrist. Dr. Ellis provided work restrictions including sitting intermittently for four hours a day and lifting up to five pounds.

On October 15, 2020 appellant requested reconsideration.

By decision dated January 13, 2021, OWCP denied modification of its December 18, 2019 decision.

OWCP continued to receive evidence. In an October 14, 2021 report, Dr. Ellis described the October 2, 2019 employment incident including casing mail with repetitive movements of standing, bending, lifting, twisting, reaching, grasping, pushing, and pulling. He also described the physical activities required to deliver express mail on October 2, 2019. Dr. Ellis reviewed a September 27, 2021 magnetic resonance imaging (MRI) scan and December 21, 2017 electrodiagnostic studies. He repeated his previous diagnoses, and opined that on October 2, 2019 appellant had experienced tightness in the right side of her neck and shoulder area, which was caused by a muscle spasm that resulted in increased pressure on the discs in the cervical spine. Dr. Ellis noted that she performed strenuous actions on October 2, 2019, including "putting together heavy materials for the route." He related that driving her vehicle on that date, which required twisting, turning, and moving the hand brake, caused increased pressure on appellant's spine and acute impingement at the right C6 spinal nerves. Dr. Ellis further opined that the pressure on the cervical nerves and neck caused her carpal tunnel syndrome symptoms, a traumatic injury. He noted that the C6 nerve "innervates the median nerve in the wrist which goes to the thumb and index finger...." Dr. Ellis advised that spinal nerve impingement caused peripheral nerve entrapment. He related that the repetitive work appellant performed at the employing establishment, combined with "the repetitive work on October 2, 2019, caused more straining of the right wrist and tendinitis in the right wrist contributing to the right carpal tunnel syndrome." Dr. Ellis opined that, while appellant had clinical carpal tunnel syndrome before October 2, 2019, the pressure on the cervical nerves resulted in symptoms found on electrodiagnostic testing, and thus it was an "acute injury in one day." He found that she was partially disabled from work.

On November 7, 2021 appellant requested reconsideration.

In a December 15, 2021 report, Dr. Ellis repeated that appellant's work-related activities including casing mail and delivering express mail resulted in, and contributed to her cervical spine condition, which was aggravated by her preexisting back injuries.

By decision dated January 11, 2022, OWCP denied modification of its January 31, 2021 decision.

On January 10, 2023 appellant requested reconsideration. In a January 11, 2023 report, Dr. Ellis related that, although appellant had preexisting degenerative conditions, these were occupational injuries that developed as a result of performing her work-related duties, rather than injuries that had occurred prior to her employment. He opined that she sustained repetitive strains and stresses due to her work duties including lifting, carrying, working with a modified head posture, twisting, and turning. Dr. Ellis attributed appellant's injuries to the "extremely labor intensive and repetitive work required of her while employment by the [employing establishment] for the past 20-plus years in combination with the sudden trauma she sustained on October 2, 2019." He described her employment activities on October 2, 2019 and noted that April 16 and October 16, 2019 electromyogram (EMG) studies revealed bilateral carpal tunnel syndrome, and right C6 and C7 spinal nerve impingement. Dr. Ellis found that due to the repetitive physically demanding use of the upper extremities while carrying and delivering mail, appellant had developed a cumulative trauma, also known as an overuse injury, which occurred due to repeated microtraumas and minute injuries, and misappropriate use of a body part. He determined that the physical demands of her job, in combination with the repetitive duties that placed increased strain and pressure within the cervical spine caused by a bent down and forward head position, as well as reaching out away from her body above the level of her shoulder, had led to the development of degenerative disc disease of the cervical spine, cervical stenosis, and bilateral neuroforaminal narrowing at C4-5 and C5-6. Dr. Ellis found that appellant's cervical spine injuries, shoulder injuries, and bilateral carpal tunnel syndrome had been directly caused by her work-related activities.

By decision dated March 30, 2023, OWCP denied modification of its January 11, 2022 decision.

In an April 6, 2023 report, Dr. Ellis again reviewed appellant's previous traumatic injury claims and asserted that on October 2, 2019 she had suffered an acute injury in addition to her ongoing chronic injuries, which resulted in an exacerbation and irreversible worsening of neck pain radiating down both shoulders and arms with associated weakness and pain.

On May 16, 2023 appellant requested reconsideration.

By decision dated July 27, 2023, OWCP denied modification of its March 30, 2023 decision.

On June 26, 2024 appellant requested reconsideration, and submitted additional medical evidence.

In a June 20, 2024 report, Dr. Ellis opined that "repetitive reaching and overhead activities required for sorting mail, combined with mechanical stresses of lifting and maneuvering heavy objects have led to micro-tears and inflammation in the shoulder tendons and muscles resulting in

rotator cuff tendinitis and bursitis.” He also opined that sustained postures and repetitive motions contributed to degenerative changes in appellant’s cervical spine “including disc herniations and spondylolisthesis, by exerting chronic compressive and shear forces on the intervertebral discs and facet joints.” Dr. Ellis reviewed her work duties and found that the events of October 2, 2019 were “the straw that broke the camel’s back” as the “intense physical demands and the exacerbation of preexisting conditions culminated in a significant deterioration of her health, making it impossible for her to continue performing her job without severe pain and functional impairments” and resulted in her cervical spine conditions, shoulder injuries, and right carpal tunnel syndrome. He compared MRI scans dated January 31 2018 and September 27, 2021 and found that appellant’s spinal condition had worsened over time. Dr. Ellis reported that the repetitive and strenuous work that she performed over the years significantly contributed to the progression of her musculoskeletal conditions. He further found that the “culmination of these repetitive tasks on October 2, 2019 led to a severe exacerbation of [appellant’s] symptoms....” Dr. Ellis diagnosed cervical disc displacement at C5-6 and C6-7, cervical spondylosis with radiculopathy, cervical spondylolisthesis, impingement syndrome, and rotator cuff tendinitis of the shoulders bilaterally, and right carpal tunnel syndrome.

By decision dated July 2, 2024, OWCP denied modification of its July 27, 2023 decision.⁴

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁶ that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁷ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.⁹ There are two components involved in establishing fact of injury. First, the employee must submit

⁴ It noted that Dr. Ellis attributed appellant’s condition to exposure to work duties over time and advised her that she could file an occupational disease claim if she believed that her condition resulted from incidents occurring over the course of more than one work shift.

⁵ *Supra* note 1.

⁶ *See J.K.*, Docket No. 20-0527 (issued May 24, 2022); *J.C.*, Docket No. 20-0882 (issued June 23, 2021); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *J.K., id.*; *J.C., id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged.¹⁰ Second, the employee must submit evidence, in the form of probative medical evidence, to establish that the employment incident caused an injury.¹¹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹² A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment incident must be based on a complete factual and medical background.¹³ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the accepted employment incident.¹⁴

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁵

ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant provided a series of reports wherein Dr. Ellis, found that her employment activities on October 2, 2019 caused or contributed to the diagnosed conditions of muscle tendon strain of the cervical spine, deranged discs of the cervical spine, right C6 and C7 spine nerve impingement, right carpal tunnel syndrome with median nerve impingement, and right wrist tendinitis. Dr. Ellis explained that, on October 2, 2019, appellant experienced tightness in the right side of her neck and shoulder area from a muscle spasm which put increased pressure on the discs in the cervical spine. He opined that repetitive task performed on October 2, 2019 caused a severe exacerbation of her symptoms. Dr. Ellis further opined that the pressure on the cervical nerves and neck caused appellant's carpal tunnel syndrome symptoms, a traumatic injury. The Board

¹⁰ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

¹¹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

¹² *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹³ *S.V.*, Docket No. 22-1010 (issued February 21, 2023); *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁴ *Id.*

¹⁵ *See G.D.*, Docket No. 20-0966 (issued July 21, 2022); *R.C.*, Docket No. 19-0376 (issued July 15, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023).

finds that while his opinion is insufficient to establish causal relationship, it is sufficient to require further development of the medical evidence.¹⁶

The Board notes that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant's burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence.¹⁷ It has an obligation to see that justice is done.¹⁸

The case must therefore be remanded to OWCP for further development of the medical evidence. On remand OWCP shall refer appellant, along with a statement of accepted facts and the medical record to a specialist in the appropriate field of medicine. The referral physician shall provide a rationalized opinion on whether appellant's diagnosed conditions are causally related to the accepted October 2, 2019 employment incident. If the physician opines that the diagnosed conditions are not causally related, they must explain with rationale how or why their opinion differs from that of Dr. Ellis. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁶ *J.M.*, Docket No. 22-0916 (issued September 30, 2024); *D.V.*, Docket No. 21-0383 (issued October 4, 2021); *K.S.*, Docket No. 19-0506 (issued July 23, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁷ *Id.*

¹⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the July 2, 2024 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 7, 2024
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board